सोबत शासकीय कर्मचा-यांविरुद्ध "अभियोग दाखल करण्यास मंजूरी देणे" या विषयावरील केंद्र शासनाच्या सेवा, जनतेच्या गा-हाणी व निवृत्तीवेतन मंत्रालय (सेवा व प्रशिक्षण विभाग) नवी दिल्ली यांच्या कार्यालयीन ज्ञापन क्रमांक 107/13/2007- एव्हीडी (आय), दिनांक 27 जून, 2008 व ज्ञापन क्रमांक 142/22/2007- एव्हीडी (आय), दिनांक 10 नोव्हेंबर, 2008 च्या प्रती.

ज्ञापन क्रमांक 107/13/2007- एव्हीडी (आय), दिनांक 27 जून, 2008

Subject : Sanction for prosecution u/s 19 (1) of P.C.Act.

Section 19 of the Prevention of Corruption Act, 1988, regulating the requirement of taking prior sanction of the competent authority before prosecution of a public servant provides as under :

"19 (1) No court shall take cognizance of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant except with the previous sanction -

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or wih the sanction of the Central Government, of that Government ;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or wih the sanction of the State Government, of that Government ;

(c) in the case of any other person, of the authority competent to remove him from his office.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been commited."

2. Hon'ble Supreme Court, in the case of R.S. Nayak vs A.R.Antulay (1984) 2 SCC 183, while interpreting the corresponding provisions of Prevention of Corruption Act, 1947, in regard to requirement of a sanction in a case where the

accused public servant had ceased to hold the office which he is alleged to have misused or abused, though holding another office at the time when the Court is called upon to take cognizance of an offence, held that upon a true construction of Section 6 of P.C.Act,1947, it is implicit therein that sanction of that competent authority alone would be necessary which is competent to remove the public servant from the office which he is alleged to have been misused or abused for corrupt motive and for which a prosecution is intended to be launched against him. It held that if the accused has ceased to hold that office by the date the Court is called upon to take cognizance of the offences alleged to have been committed by such public servant, no sanction under Section 6 would be necessary despite the fact that he may be holding any other office on the relevant date which may make him a public servant as understood in Section 21. The Hon'ble Court further held that some earlier judgements to the effect that if a public servant ceases to hold the earlier office abused by him but continuous to be a public servant by holding another office, sanction of the competent authority to remove him from latter office is required, as not laying down correct law and cannot be accepted as making a correct interpretation of Section 6 of the Prevention of Corruption Act, 1947 (corresponding to Sec.19 of Prevention of Corruption Act, 1988).

3. These issues again came up before the Hon'ble Supreme Court in the cases of Parkash Singh Badal and Another Vs State of Punjab 2006 (13) SCALE 54, K.Karunakaran Vs State of Kerala 2006 (13) SCALE 88 and in the case of Lalu Prasad Yadav Vs State of Bihar 2006 (13) SCALE 91. The Hon'ble Supreme Court endorsed the above propositions in the R.S.Nayak case and did not agree that the views expressed in R.S.Nayak Vs A.R.Antulay case are not correct or that the said decision should be taken as per incuriam or that it was a case of "causes omissus".

4. A question has been raised whether the ratio of above cited judgements is applicable to civil servants who, while being member of a service or cadre, hold different posts on transfer or promotion etc. at different points of time in the course of their service. A perusal of the various judgements shows that in these cases, the litigating parties were political personalities who held offices like Chief Minister or MP or MLA etc. at different points of time and, therefore, though they were public servants in terms of section 21 of the IPC while holding such offices, they were treated as holding different 'offices' at the time of taking of cognizance of the offence than one held and allegedly abused by them in respect of which the prosecution is sought to be launched. It is in the context of the nature of public offices held by the public figures involved in the above cases that the issues relating to public servant holding plurality of offices, or holding another office as a public servant etc. arose. These judgements did not discuss the case of a civil servant, who as a member of service/cadre holds different positions/posts on transfer or promotion in the course of

his career in Government service. The issue whether holding of these different posts amounts to holding defferent 'offices' within the meaning of the relevant Sections of Prevention of Corruption Act was also not before the Hon'ble Court in the above cited cases.

5. The question raised has been examined in consultation with the Ministry of Law & Justice. It is, hereby clarified that while holding different posts on transfer or promotion, a civil servant cannot be treated as holding different 'offices' within the meaning of the relevant Sections of the said Act. The only office held by him is that of the member of the service to which he belongs as a civil servant, irrespective of the post held on transfer/promotion etc. Therefore, the requirements of seeking sanction of the competent authority under Section 19 of the Prevention of Corruption Act continues to be applicable so long as the officer continues to be a member of civil service and the protection under Section 19 (1) of Prevention of Corruption Act cannot be said to have been taken away only on the consideration that at the time the officer holds charge of another post on transfer or promotion, than one alleged to have been abused. All the investigating agencies may, therefore, ensure that for seeking prosecution of a civil servant, they obtain sanction of the competent authority under Section 19 (1) of prevention of Corruption Act before the Court is called upon to take cognizance of an offence under Section 7,10,11,13 and 15 of Prevention of Corruption Act.

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sd/- (Vijay Kumar)
Under Secretary to the Government of India

ज्ञापन क्रमांक 142/22/2007- एव्हीडी (आय), दिनांक 10 नोव्हेंबर, 2008

Subject: Prosecution sanction-- evidence of Sanctioning / signing / authenticating authority.

The undersigned is directed to say that investigating agencies generally include the name of the sanctioning authority/signing/authenticating authority in the list of prosecution witnesses for the purposes of proving the validity of the sanction accorded under Section 19 (1) of the Prevention of Corruption Act, 1988 or under Section 197 (1) of the Criminal Procedure Code, 1973 for prosecution of government servants. It is observed that summons for recording of evidence for proving the sanction are usually received long after the concerned officer has vacated the post and, many a times, long after the said officer has retired from Service. The process of

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recording of evidence/cross examination also involves a number of visits to the Courts. The officers who have retired have to make their own arrangements for travel/stay and then are required to claim reimbursements from the concerned Departments/organizations subsequently. This puts the sanctioning/signing/authenticating authority to a considerable inconvenience. A question has been raised whether personal evidence of sanctioning/signing/authenticating authority is a legal requirement for proving the sanction or whether the same can be proved otherwise.

2. The question whether a personal evidence of sanctioning / signing /authenticating authority is legal necessity to prove the validity of the sanction accorded u/s 19 (1) of the Prevention of Corruption Act, 1988 or under section 197 (1), CrPC has been examined in consultation with the Ministry of Law and Justice (Department of Legal Affairs).

3. The Hon'ble Supreme Court in the case of Md.Iqbal Ahmed vs. State of AP 1979 Cr LJ 633 (SC) and in the case of State of Rajasthan Vs. Dr.A.K.Dutta AIR 1981 SC has held that the requirement of proving the sanction can be done in any two ways-either by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction or by adducing evidence aliunde to show that the facts were placed before the sanctioning authority and the satisfaction arrived at by it. In the case of CBI, Hyderabad vs.P.Muthuraman 1996 Cr.LJ 3638, it was held that signature on the sanction should be proved either by the sanctioning authority or by his subordinate officer or clerk who has seen the sanctioning authority or who is acquainted with the signature of the sanctioning authority. Once the signature is proved and if the sanction order is a speaking order, then the matter ends there; otherwise evidence should be adduced to prove that the sanctioning authority had perused the material before according sanction which may not be in particular form. In the case of Babarali Ahmedali Sayed V. State of Gujarat 1991 Cr.LJ 1269 (Guj) it was held that if facts appear on the face of sanction then there is no question of proving it by leading evidence of authority who has accorded sanction to prosecute. No seperate evidence is required to be led to show that relevant facts were placed before the authority. If the facts are not appearing on the face of the sanction, then it can be proved by independent evidence that sanction was accorded after those facts had been placed before the sanctioning authority. In the case of State Vs. K.Narasimhachary (2006 Cr.LJ 518 SC), the Apex Court has held that the prosecution sanction order being a public document, there may not be a need to summon sanctioning authority as prosecution witness provided the prosecution proves that all the relevant material was placed before the sanctioning authority and the sanction was accorded thereafter. There are several other judgements of the Hon'ble Supreme Court and other High Courts reiterating the above legal position.

4. Therefore, in the light of the catena of judgements on the subject, it is evident that if the sanction is accorded by the competent sanctioning authority and it contains the facts constituting the offence and the grounds of satisfaction, there is no requirement for the prosecution to summon the sanctioning/signing/authenticating authority for their personal evidence to prove the validity of the sanction. If at all necessary, the same can be corroborated by producing the original sanction and by examining the person conversant with the signature of the sanctioning authority/signing/authenticated authority. Accordingly, there is no requirement for the prosecution to insist on personal evidence of sanctioning/signing/authenticating authority for proving the validity of sanction as the same can be proved adequately otherwise.

5. However, if the prosecution sanction is challenged by the defence on the grounds of competence of the sanctioning authority or non-application of mind and if a prima-facie case for doubting the validity of the sanction is made out by the accused, the trial court would be within its powers under the provisions of section 311 of the Cr.P.C. to summon the sanctioning/signing/authenticating authority.

6. All the concerened authorities/investigating agencies may keep the above settled legal position in view while taking steps for proving the validity of the sanction and ensure that the Sanctioning/signing/authenticating authority may not be routinely included in the list of witnesses for the prosecution.

sd/- (Vijay Kumar)
Under Secretary to the Government of India

क्रमांक : सीडीआर-१००९/प्र.क्र.१ /०९/११,
सामान्य प्रशासन विभाग,
मंत्रालय, मुंबई ४०० ०३२.
दिनांक :- ५ जानेवारी, २००९.

माहिती व मार्गदर्शनसाठी सादर अग्रेषित.
राज्यपालांचे सचिव,
मुख्यमंत्र्यांचे प्रधान सचिव,
उप मुख्यमंत्र्यांचे सचिव,
मुख्य सचिव, महाराष्ट्र शासन,
शासनाचे सर्व अपर मुख्य सचिव/ प्रधान सचिव/ सचिव

P.T.O..

मुख्य सचिवांच्या कार्यालयातील उप सचिव,
सर्व मंत्री व राज्यमंत्री यांचे खाजगी सचिव / स्वीय सहायक
* प्रबंधक, उच्च न्यायालय, मूळ शाखा, मुंबई,
* प्रबंधक, उच्च न्यायालय, अपील शाखा, मुंबई,
* प्रबंधक, लोकआयुक्त व उप लोकआयुक्त यांचे कार्यालय, मुंबई,
* सचिव, महाराष्ट्र विधानसभा सचिवालय, मुंबई,
* सचिव, महाराष्ट्र विधानपरिषद सचिवालय, मुंबई,
* सचिव, महाराष्ट्र लोकसेवा आयोग, मुंबई,
सामान्य प्रशासन विभागातील सर्व कार्यासने.
सर्व मंत्रालयीन विभाग,

हे पृष्ठांकन महाराष्ट्र शासनाच्या www.maharashrata. gov.in या वेबसाईटवर उपलब्ध करुन देण्यात आले असून त्याचा संगणक संकेतांक क्रमांक २००९०१०५१५४२२५००१ असा आहे.

निवड नस्ती

(का.तु.सातकर)
अवर सचिव, सामान्य प्रशासन विभाग

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* पत्राने.